



General Assembly

January Session, 2015

Raised Bill No. 6752

LCO No. 3365



Referred to Committee on BANKING

Introduced by:
(BA)

***AN ACT CONCERNING THE CONTINUED OPERATION OF THE
FORECLOSURE MEDIATION PROGRAM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of section 49-31k of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (1) "Mortgagor" means: (A) The owner-occupant of one-to-four
5 family residential real property located in this state, which is the
6 primary residence of such owner-occupant, who is also the borrower
7 under a mortgage encumbering such residential real property, or if not
8 the borrower under such a mortgage, the owner of such property by
9 virtue of an event described in 12 USC 1701j-3(d), except an heir or
10 occupying nonowner of a property encumbered by a reverse annuity
11 mortgage, [which is the primary residence of such owner-occupant,] or
12 (B) a religious organization that is (i) the owner of real property
13 located in this state, and (ii) the borrower under a mortgage
14 encumbering such real property;

15 Sec. 2. Section 49-31l of the general statutes is repealed and the
16 following is substituted in lieu thereof (*Effective from passage*):

17 (a) [Prior to July 1, 2016:] (1) Any action for the foreclosure of a
18 mortgage on residential real property with a return date during the
19 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
20 the provisions of subsection (b) of this section, and (2) any action for
21 the foreclosure of a mortgage on (A) residential real property with a
22 return date [during the period from July 1, 2009, to June 30, 2016,
23 inclusive] on or after July 1, 2009, or (B) real property owned by a
24 religious organization with a return date [during the period from
25 October 1, 2011, to June 30, 2016, inclusive] on or after October 1, 2011,
26 shall be subject to the provisions of subsection (c) of this section.

27 (b) (1) [Prior to July 1, 2016, when] When a mortgagee commences
28 an action for the foreclosure of a mortgage on residential real property
29 with a return date during the period from July 1, 2008, to June 30, 2009,
30 inclusive, the mortgagee shall give notice to the mortgagor of the
31 foreclosure mediation program established in section 49-31m by
32 attaching to the front of the foreclosure complaint that is served on the
33 mortgagor: (A) A copy of the notice of the availability of foreclosure
34 mediation, in such form as the Chief Court Administrator prescribes,
35 and (B) a foreclosure mediation request form, in such form as the Chief
36 Court Administrator prescribes.

37 (2) Except as provided in subdivision (3) of this subsection, a
38 mortgagor may request foreclosure mediation by submitting the
39 foreclosure mediation request form to the court and filing an
40 appearance not more than fifteen days after the return date for the
41 foreclosure action. Upon receipt of the foreclosure mediation request
42 form, the court shall notify each appearing party that a foreclosure
43 mediation request form has been submitted by the mortgagor.

44 (3) The court may grant a mortgagor permission to submit a
45 foreclosure mediation request form and file an appearance after the
46 fifteen-day period established in subdivision (2) of this subsection, for
47 good cause shown.

48 [(4) No foreclosure mediation request form may be submitted to the
49 court under this subsection on or after July 1, 2016.]

50 [(5)] (4) If at any time on or after July 1, 2008, [but prior to July 1,
51 2016,] the court determines that the notice requirement of subdivision
52 (1) of this subsection has not been met, the court may, upon its own
53 motion or upon the written motion of the mortgagor, issue an order
54 that no judgment may enter for fifteen days during which period the
55 mortgagor may submit a foreclosure mediation request form to the
56 court.

57 [(6)] (5) Notwithstanding any provision of the general statutes or
58 any rule of law to the contrary, [prior to July 1, 2016,] no judgment of
59 strict foreclosure nor any judgment ordering a foreclosure sale shall be
60 entered in any action subject to the provisions of this subsection and
61 instituted by the mortgagee to foreclose a mortgage on residential real
62 property unless: (A) Notice to the mortgagor has been given by the
63 mortgagee in accordance with subdivision (1) of this subsection and
64 the time for submitting a foreclosure mediation request form has
65 expired and no foreclosure mediation request form has been
66 submitted, or if such notice has not been given, the time for submitting
67 a foreclosure mediation request form pursuant to subdivision (2) or (3)
68 of this subsection has expired and no foreclosure mediation request
69 form has been submitted, or (B) the mediation period set forth in
70 subsection (b) of section 49-31n, as amended by this act, has expired or
71 has otherwise terminated, whichever is earlier.

72 [(7)] (6) None of the mortgagor's or mortgagee's rights in the
73 foreclosure action shall be waived by the mortgagor's submission of a
74 foreclosure mediation request form to the court.

75 (c) (1) [Prior to July 1, 2016, when] When a mortgagee commences
76 an action for the foreclosure of a mortgage on residential real property
77 with a return date on or after July 1, 2009, or, with respect to real
78 property owned by a religious organization, a return date on or after

79 October 1, 2011, the mortgagee shall give notice to the mortgagor of
80 the foreclosure mediation program established in section 49-31m by
81 attaching to the front of the writ, summons and complaint that is
82 served on the mortgagor: (A) A copy of the notice of foreclosure
83 mediation, in such form as the Chief Court Administrator prescribes,
84 (B) a copy of the foreclosure mediation certificate form described in
85 subdivision (3) of this subsection, in such form as the Chief Court
86 Administrator prescribes, (C) a blank appearance form, in such form as
87 the Chief Court Administrator prescribes, (D) with respect to an action
88 for the foreclosure of a mortgage on residential real property with a
89 return date on or after October 1, 2011, to September 30, 2013,
90 inclusive, a mediation information form and a notice containing
91 contact information for authority-approved consumer credit
92 counseling agencies, which form and notice shall be in such form as
93 the Chief Court Administrator prescribes, and which form shall be
94 designed to elicit current financial information and such other
95 nonfinancial information from the mortgagor as the Chief Court
96 Administrator, in consultation with representatives from the banking
97 industry and consumer advocates, determines will further the
98 objectives of the mediation program. The Chief Court Administrator
99 shall develop a premediation review protocol pursuant to which the
100 mediator shall request that any documents submitted to the mediator
101 for initial review that are incomplete, contain errors or are likely to be
102 found unacceptable by the mortgagee be completed or corrected and
103 that the completed or corrected documents be resubmitted to the
104 mediator for review. Such premediation review, including any
105 recommendations to complete or correct documents, shall not be
106 construed to be the practice of law on behalf of any party to the
107 mediation or the provision of legal advice by the mediator. The
108 instructions to the mediation information form shall explain that the
109 completed mediation information form, along with accompanying
110 documentation reasonably requested from the mortgagor by way of
111 such instructions, shall be delivered to the mortgagee's counsel not
112 later than fifteen business days prior to the date of the initial mediation

113 session, as identified in the notice provided pursuant to subdivision (2)
114 of subsection (c) of section 49-31n, as amended by this act, and (E) for
115 an action to foreclose a mortgage on residential real property with a
116 return date on or after October 1, 2013, the mediation information form
117 shall instruct the mortgagor as to the objectives of the mediation
118 program, explain the preliminary process of meeting with the
119 mediator as described in subdivision (4) of this subsection, instruct the
120 mortgagor to begin gathering financial documentation commonly used
121 in foreclosure mediation for use in meeting with the mediator and in
122 mediation, and include a notice containing contact information for
123 authority-approved consumer counseling agencies, which shall be in
124 such form as the Chief Court Administrator prescribes. The content of
125 the mediation information form shall be designed by the Chief Court
126 Administrator in consultation with representatives from the banking
127 industry and consumer advocates.

128 (2) The court shall issue a notice of foreclosure mediation described
129 in subdivision (3) of this subsection to the mortgagor not later than the
130 date three business days after the date the mortgagee returns the writ
131 to the court.

132 (3) The notice of foreclosure mediation shall instruct the mortgagor
133 to file the appearance and foreclosure mediation certificate forms with
134 the court not later than the date fifteen days from the return date for
135 the foreclosure action. With respect to actions with a return date on or
136 after October 1, 2011, to September 30, 2013, inclusive, such notice shall
137 remind the mortgagor to deliver the completed mediation information
138 form and the accompanying documentation described in subdivision
139 (1) of this subsection and encourage such delivery in advance of the
140 required date. With respect to actions with a return date on or after
141 October 1, 2013, [to June 30, 2016, inclusive,] such notice shall instruct
142 the mortgagor to begin gathering financial information commonly
143 used in foreclosure mediation for use in meeting with the mediator
144 and in mediation. The mediation information form and accompanying
145 documentation shall not, without the explicit written instruction of the

146 mortgagor, be publicly available. Such notice of foreclosure mediation
147 shall be accompanied by materials from the Department of Banking, as
148 prescribed by the Chief Court Administrator, which shall describe the
149 community-based resources available to the mortgagor, including
150 authority-approved housing counseling agencies that may assist with
151 preparation for mediation and application for mortgage assistance
152 programs. The foreclosure mediation certificate form shall require the
153 mortgagor to provide sufficient information to permit the court to
154 confirm that the defendant in the foreclosure action is a mortgagor,
155 and to certify that said mortgagor has sent a copy of the mediation
156 certificate form to the plaintiff in the action.

157 (4) Upon receipt of the mortgagor's appearance and foreclosure
158 mediation certificate forms, and provided the court confirms the
159 defendant in the foreclosure action is a mortgagor and that said
160 mortgagor has sent a copy of the mediation certificate form to the
161 plaintiff, the court shall assign the case to mediation and issue notice of
162 such assignment to all appearing parties, which notice shall include an
163 electronic mail address for all communications related to the
164 mediation. The court shall issue such notice not earlier than the date
165 five business days after the return date or by the date three business
166 days after the date on which the court receives the mortgagor's
167 appearance and foreclosure mediation certificate forms, whichever is
168 later, except that if the court does not receive the appearance and
169 foreclosure mediation certificate forms from the mortgagor by the date
170 fifteen days after the return date for the foreclosure action, the court
171 shall not assign the case to mediation. Promptly upon receipt of the
172 notice of assignment, but not later than the thirty-fifth day following
173 the return date, the mortgagee or its counsel shall deliver to the
174 mediator, via the electronic mail address provided for communications
175 related to the mediation, [and to the mortgagor, via first class, priority
176 or overnight mail,] (A) an account history identifying all credits and
177 debits assessed to the loan account and any related escrow account in
178 the immediately preceding twelve-month period and an itemized

179 statement of the amount required to reinstate the mortgage loan with
180 accompanying information, written in plain language, to explain any
181 codes used in the history and statement which are not otherwise self-
182 explanatory, (B) the name, business mailing address, electronic mail
183 address, facsimile number and direct telephone number of an
184 individual able to respond with reasonable adequacy and promptness
185 to questions relative to the information submitted to the mediator
186 pursuant to this subdivision, and any subsequent updates to such
187 contact information, which shall be provided reasonably promptly to
188 the mediator via the electronic mail address provided for
189 communication related to the mediation, (C) current versions of all
190 reasonably necessary forms and a list of all documentation reasonably
191 necessary for the mortgagee to evaluate the mortgagor for common
192 alternatives to foreclosure that are available through the mortgagee, if
193 any, (D) a copy of the note and mortgage, including any agreements
194 modifying such documents, (E) summary information regarding the
195 status of any pending foreclosure avoidance efforts being undertaken
196 by the mortgagee, (F) a copy of any loss mitigation affidavit filed with
197 the court, and (G) at the mortgagee's option, (i) the history of
198 foreclosure avoidance efforts with respect to the mortgagor, (ii)
199 information regarding the condition of mortgaged property, and (iii)
200 such other information as the mortgagee may determine is relevant to
201 meeting the objectives of the mediation program. The mortgagee or its
202 counsel shall also deliver to the mortgagor, via first class, priority or
203 overnight mail, and not later than the thirty-fifth day following the
204 return date, the items in subparagraphs (B) and (C) of this subdivision.
205 Following the mediator's receipt of such information, the court shall
206 assign a mediator to the mediation and schedule a meeting with the
207 mediator and the mortgagor and shall endeavor to [schedule] hold
208 such meeting on or prior to the forty-ninth day following the return
209 date. The notice of such meeting shall instruct the mortgagor to
210 complete the forms prior to the meeting and to furnish such forms
211 together with the documentation contained in the list, as provided by
212 the mortgagee following the filing of the foreclosure mediation

213 certificate, at the meeting. At such meeting, the mediator shall review
214 such forms and documentation with the mortgagor, along with the
215 information supplied by the mortgagee, in order to discuss the options
216 that may be available to the mortgagor, including any community-
217 based resources, and assist the mortgagor in completing the forms and
218 furnishing the documentation necessary for the mortgagee to evaluate
219 the mortgagor for alternatives to foreclosure. The mediator may elect
220 to schedule subsequent meetings with the mortgagor and determine
221 whether any mortgagor may be excused from an in-person appearance
222 at such subsequent meeting. [As soon as practicable, but in no case]
223 Preferably no later than the eighty-fourth day following the return
224 date, or as soon thereafter as may be practicable given the mediator's
225 schedule and the complexity of the mortgagor's financial
226 circumstances and the mortgagee's documentation requests, the
227 mediator shall facilitate and confirm the submission by the mortgagor
228 of the forms and documentation to the mortgagee's counsel via
229 electronic means and, at the mortgagee's election, directly to the
230 mortgagee per the mortgagee's instruction, and determine, based on
231 the mortgagor's attendance at the meetings and the extent the
232 mortgagor completed the forms and furnished the documentation
233 contemplated in this subdivision, or failed to perform such tasks
234 through no material fault of the mortgagee, and file a report with the
235 court indicating, (I) whether mediation shall be scheduled with the
236 mortgagee, (II) whether the mortgagor attended scheduled meetings
237 with the mediator, (III) whether the mortgagor fully or substantially
238 completed the forms and furnished the documentation requested by
239 the mortgagee, (IV) the date on which the mortgagee supplied the
240 forms and documentation, and (V) any other information the mediator
241 determines to be relevant to the objectives of the mediation program.
242 No meeting or communication between the mediator and mortgagor
243 under this subdivision shall be treated as an impermissible ex parte
244 communication. If the mediator determines that the mortgagee shall
245 participate in mediation, the court shall promptly issue notice to all
246 parties of such determination and schedule a mediation session

247 between the mortgagee and mortgagor in accordance with subsection
248 (c) of section 49-31n, as amended by this act, to be held not later than
249 five weeks following the submission to the mortgagee of the forms and
250 documentation contemplated in this subdivision. If the mediator
251 determines that no sessions between the mortgagee and mortgagor
252 shall be scheduled, the court shall promptly issue notice to all parties
253 regarding such determination and mediation shall be terminated. Any
254 mortgagor wishing to contest such determination shall petition the
255 court and show good cause for reinclusion in the mediation program,
256 including, but not limited to, a material change in financial
257 circumstances or a mistake or misunderstanding of the facts by the
258 mediator.

259 (5) Notwithstanding the provisions of this subsection, the court may
260 refer a foreclosure action brought by a mortgagee to the foreclosure
261 mediation program at any time, for good cause shown, provided the
262 mortgagor has filed an appearance in said action and further provided
263 the court shall, not later than the date three business days after the date
264 on which it makes such referral, send a notice to each appearing party
265 assigning the case to mediation and requiring the parties to participate
266 in the premediation process described in subdivision (4) of this
267 subsection, with the court establishing deadlines to ensure that the
268 premediation process is to be completed by the parties as
269 expeditiously as the circumstances warrant and permit. When
270 determining whether good cause exists, the court shall consider
271 whether the parties are likely to benefit from mediation and, in the
272 case of a referral after prior attempts at mediation have been
273 terminated, whether there has been a material change in
274 circumstances.

275 (6) Notwithstanding any provision of the general statutes or any
276 rule of law, [prior to July 1, 2016,] (A) for the period of time which
277 shall not exceed eight months from the return date, the mortgagor
278 shall be permitted to file an answer, special defenses or counterclaims,
279 but no mortgagee or mortgagor shall make any motion, request or

280 demand with respect to the other, except those motions, requests or
281 demands that relate to the mediation program described in section 49-
282 31m and the mediation sessions held pursuant to such program,
283 provided (i) a mortgagor seeking to contest the court's jurisdiction may
284 file a motion to dismiss and the mortgagee may object to such motion
285 to dismiss in accordance with applicable law and the rules of the
286 courts, and (ii) if the mortgagor elects to make any other motion,
287 request or demand with respect to the mortgagee, the eight-month
288 limit shall no longer apply to either party; and (B) no judgment of strict
289 foreclosure nor any judgment ordering a foreclosure sale shall be
290 entered in any action subject to the provisions of this subsection and
291 instituted by the mortgagee to foreclose a mortgage on residential real
292 property or real property owned by a religious organization unless: (i)
293 The mediation period set forth in subsection (c) of section 49-31n, as
294 amended by this act, has expired or has otherwise terminated,
295 whichever is earlier, and, if fewer than eight months has elapsed from
296 the return date at the time of termination, fifteen days have elapsed
297 since such termination and any pending motion or request to extend
298 the mediation period has been heard and denied by the court, or (ii)
299 the mediation program is not otherwise required or available. Nothing
300 in this subdivision shall affect any motion made or any default or
301 judgment entered on or before June 30, 2011.

302 (7) With respect to foreclosure actions with a return date on or after
303 July 1, 2011, [to June 30, 2016, inclusive,] notwithstanding any
304 provision of the general statutes or any rule of law to the contrary, the
305 mortgagee shall be permitted following the eight-month or fifteen-day
306 period described in subdivision (6) of this subsection, to
307 simultaneously file, as applicable, (A) a motion for default, and (B) a
308 motion for judgment of strict foreclosure or a motion for judgment of
309 foreclosure by sale with respect to the mortgagor in the foreclosure
310 action.

311 (8) None of the mortgagor's or mortgagee's rights in the foreclosure
312 action shall be waived by participation in the foreclosure mediation

313 program.

314 Sec. 3. Section 49-31n of the general statutes is repealed and the
315 following is substituted in lieu thereof (*Effective from passage*):

316 (a) [Prior to July 1, 2016:] (1) Any action for the foreclosure of a
317 mortgage on residential real property with a return date during the
318 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
319 the provisions of subsection (b) of this section, and (2) any action for
320 the foreclosure of a mortgage on (A) residential real property with a
321 return date [during the period from July 1, 2009, to June 30, 2016,
322 inclusive] on or after July 1, 2009, or (B) real property owned by a
323 religious organization with a return date [during the period from
324 October 1, 2011, to June 30, 2016, inclusive] on or after October 1, 2011,
325 shall be subject to the provisions of subsection (c) of this section.

326 (b) (1) For any action for the foreclosure of a mortgage on residential
327 real property with a return date during the period from July 1, 2008, to
328 June 30, 2009, inclusive, the mediation period under the foreclosure
329 mediation program established in section 49-31m shall commence
330 when the court sends notice to each appearing party that a foreclosure
331 mediation request form has been submitted by a mortgagor to the
332 court, which notice shall be sent not later than three business days after
333 the court receives a completed foreclosure mediation request form. The
334 mediation period shall conclude not later than the conclusion of the
335 third mediation session between the mortgagor and mortgagee or
336 seven months after the return date, whichever is earlier, except that the
337 court may, in its discretion, for good cause shown, upon the motion of
338 any party or the mediator, extend the mediation period subject to the
339 provisions of subdivision [(9)] (8) of this subsection or shorten the
340 mediation period.

341 (2) The first mediation session shall be held not later than fifteen
342 business days after the court sends notice to all parties that a
343 foreclosure mediation request form has been submitted to the court.

344 The mortgagor and mortgagee shall appear in person at each
345 mediation session and shall have the ability to mediate, except that (A)
346 if a party is represented by counsel, the party's counsel may appear in
347 lieu of the party to represent the party's interests at the mediation,
348 provided the party has the ability to mediate, the mortgagor attends
349 the first mediation session in person, and the party is available (i)
350 during the mediation session by telephone, and (ii) to participate in the
351 mediation session by speakerphone, provided an opportunity is
352 afforded for confidential discussions between the party and party's
353 counsel, (B) following the initial mediation session, if there are two or
354 more mortgagors who are self-represented, only one mortgagor shall
355 be required to appear in person at each subsequent mediation session
356 unless good cause is shown, provided the other mortgagors are
357 available (i) during the mediation session, and (ii) to participate in the
358 mediation session by speakerphone, and (C) if a party suffers from a
359 disability or other significant hardship that imposes an undue burden
360 on such party to appear in person, the mediator may grant permission
361 to such party to participate in the mediation session by telephone. A
362 mortgagor's spouse, who is not a mortgagor but who lives in the
363 subject property, may appear at each mediation session, provided all
364 appearing mortgagors consent, in writing, to such spouse's appearance
365 or such spouse shows good cause for his or her appearance and the
366 mortgagors consent in writing to the disclosure of nonpublic personal
367 information to such spouse. If the mortgagor has submitted a complete
368 package of financial documentation in connection with a request for a
369 particular foreclosure alternative, the mortgagee shall have thirty-five
370 days from the receipt of the completed package to respond with a
371 decision and, if the decision is a denial of the request, provide the
372 reasons for such denial. If the mortgagor has, in connection with a
373 request for a foreclosure alternative, submitted a financial package that
374 is not complete, or if the mortgagee's evaluation of a complete package
375 reveals that additional information is necessary to underwrite the
376 request, the mortgagee shall request the missing or additional
377 information within a reasonable period of time of such evaluation. If

378 the mortgagee's evaluation of a complete package reveals that
379 additional information is necessary to underwrite the request, the
380 thirty-five-day deadline for a response shall be extended but only for
381 so long as is reasonable given the timing of the mortgagor's submission
382 of such additional information and the nature and context of the
383 required underwriting. Not later than the third business day after each
384 mediation session held on or after June 18, 2013, the mediator shall file
385 with the court a report indicating, to the extent applicable, (i) the
386 extent to which each of the parties complied with the requirements set
387 forth in this subdivision, including the requirement to engage in
388 conduct that is consistent with the objectives of the mediation program
389 and to possess the ability to mediate, (ii) whether the mortgagor
390 submitted a complete package of financial documentation to the
391 mortgagee, (iii) a general description of the foreclosure alternative
392 being requested by the mortgagor, (iv) whether the mortgagor has
393 previously been evaluated for similar requests, whether prior to
394 mediation or in mediation, and, if so, whether there has been any
395 apparent change in circumstances since a decision was made with
396 respect to that prior evaluation, (v) whether the mortgagee has
397 responded to the mortgagor's request for a foreclosure alternative and,
398 if so, a description of the response and whether the mediator is aware
399 of any material reason not to agree with the response, (vi) whether the
400 mortgagor has responded to an offer made by the mortgagee on a
401 reasonably timely basis, and if so, an explanation of the response, (vii)
402 whether the mortgagee has requested additional information from the
403 mortgagor and, if so, the stated reasons for the request and the date by
404 which such additional information shall be submitted so that
405 information previously submitted by the mortgagor, to the extent
406 possible, may still be used by the mortgagee in conducting its review,
407 (viii) whether the mortgagor has supplied, on a reasonably timely
408 basis, any additional information that was reasonably requested by the
409 mortgagee, and, if not, the stated reason for not doing so, (ix) if
410 information provided by the mortgagor is no longer current for
411 purposes of evaluating a foreclosure alternative, a description of the

412 out-of-date information and an explanation as to how and why such
413 information is no longer current, (x) whether the mortgagee has
414 provided a reasonable explanation of the basis for a decision to deny a
415 request for a loss mitigation option or foreclosure alternative and
416 whether the mediator is aware of any material reason not to agree with
417 that decision, (xi) whether the mortgagee has complied with the time
418 frames set forth in this subdivision for responding to requests for
419 decisions, (xii) if a subsequent mediation session is expected to occur, a
420 general description of the expectations for such subsequent session
421 and for the parties prior to such subsequent session and, if not
422 otherwise addressed in the report, whether the parties satisfied the
423 expectations set forth in previous reports, and (xiii) a determination of
424 whether the parties will benefit from further mediation. The mediator
425 shall deliver a copy of such report to each party to the mediation when
426 the mediator files the report. The parties shall have the opportunity to
427 submit their own supplemental information following the filing of the
428 report, provided such supplemental information shall be submitted
429 not later than five business days following the receipt of the mediator's
430 report. Any request by the mortgagee to the mortgagor for additional
431 or updated financial documentation shall be made in writing. The
432 court may impose sanctions on any party or on counsel to a party if
433 such party or such counsel engages in intentional or a pattern or
434 practice of conduct during the mediation process that is contrary to the
435 objectives of the mediation program. Any sanction that is imposed
436 shall be proportional to the conduct and consistent with the objectives
437 of the mediation program. Available sanctions shall include, but not be
438 limited to, terminating mediation, ordering the mortgagor or
439 mortgagee to mediate in person, forbidding the mortgagee from
440 charging the mortgagor for the mortgagee's attorney's fees, awarding
441 attorney's fees, and imposing fines. In the case of egregious
442 misconduct, the sanctions shall be heightened. The court shall not
443 award attorney's fees to any mortgagee for time spent in any
444 mediation session if the court finds that such mortgagee has failed to
445 comply with this subdivision, unless the court finds reasonable cause

446 for such failure.

447 (3) If the mediator reports to the court that the parties will not
448 benefit from further mediation, the mediation period shall terminate
449 automatically. If the mediator reports to the court after the first or
450 second mediation session that the parties may benefit from further
451 mediation, the mediation period shall continue.

452 (4) If the mediation period concludes and certain issues have not
453 been resolved pursuant to the mediation, the mediator may refer the
454 mortgagor to any appropriate community-based services that are
455 available.

456 (5) The Chief Court Administrator shall establish policies and
457 procedures to implement this subsection. Such policies and procedures
458 shall, at a minimum, provide that the mediator shall advise the
459 mortgagor at the first meeting required by subdivision (4) of
460 subsection (c) of section 49-31l, as amended by this act, that a judgment
461 of strict foreclosure or foreclosure by sale may cause the mortgagor to
462 lose the residential real property to foreclosure.

463 (6) In no event shall any determination issued by a mediator under
464 this program form the basis of an appeal of any foreclosure judgment.

465 [(7) Foreclosure mediation request forms shall not be accepted by
466 the court under this subsection on or after July 1, 2016, and the
467 foreclosure mediation program shall terminate when all mediation has
468 concluded with respect to any applications submitted to the court prior
469 to July 1, 2016.]

470 [(8)] (7) At any time during the mediation period, the mediator may
471 refer a mortgagor who is the owner-occupant of one-to-four family
472 residential real property to the mortgage assistance programs, except
473 that any such referral shall not prevent a mortgagee from proceeding
474 to judgment when the conditions specified in subdivision [(6)] (5) of
475 subsection (b) of section 49-31l, as amended by this act, have been

476 satisfied.

477 [(9)] (8) (A) The mediation period shall conclude following the third
478 mediation session or if more than seven months have elapsed since the
479 return date. Not later than fifteen days following the conclusion of the
480 mediation period, and any extended mediation sessions held in
481 accordance with this subdivision, any party may move for, or the
482 mediator may request, an extension of the mediation period. The court
483 shall grant only one additional mediation session per motion or
484 request upon a finding that it is highly probable the parties will reach
485 an agreement through mediation. The court may also grant one
486 additional mediation session per motion or request upon a finding that
487 any party has engaged, either intentionally or by a pattern or practice,
488 in conduct that is contrary to the objectives of the mediation program.
489 The court shall make its ruling not later than twenty days after the
490 filing of such motion or request, and no judgment of strict foreclosure
491 or any judgment ordering a foreclosure sale shall be entered until (i)
492 the court denies the motion or request, or (ii) the conclusion of the
493 extended mediation session, except as provided in subparagraph (B) of
494 this subdivision. Upon the grant of an additional mediation session
495 following the proper finding, the court shall establish an expeditious
496 deadline for such extended mediation session to occur. Such extended
497 mediation period shall conclude following such extended mediation
498 session.

499 (B) The mediation period may be extended for one additional
500 mediation session without a hearing held pursuant to this subdivision
501 provided all parties to the mediation agree that such parties would
502 benefit from such a session and, in consultation with the mediator,
503 establish an expeditious deadline for such session to take place.

504 (C) To determine whether to extend mediation, the court may
505 consider all matters that have arisen in the mediation, including, but
506 not limited to, the number of motions to extend mediation, the reasons
507 for which an agreement has not been reached, the objectives of the

508 mediation program, the extent to which the parties will benefit from
509 further mediation, the reports submitted by the mediator, papers
510 submitted in connection with any motion, and any supplemental
511 reports submitted by a party. The court shall articulate its reasons in
512 the order granting or denying any such motion or request to extend
513 mediation.

514 ~~[(10)]~~ (9) For any case pending as of October 1, 2013, in which
515 mediation is ongoing, (A) if three or fewer sessions have been held,
516 such case shall be treated as if no sessions have been held as of said
517 date for purposes of subdivision ~~[(9)]~~ (8) of this subsection, and (B) if
518 four or more sessions have been held, then any party or the mediator
519 may move to terminate the mediation period or extend such period in
520 accordance with subdivision ~~[(9)]~~ (8) of this subsection and, if no such
521 motion to extend is made, the mediation period shall conclude after
522 the third mediation session occurring after October 1, 2013.

523 (c) (1) For any action for the foreclosure of a mortgage on residential
524 real property with a return date [during the period from July 1, 2009,
525 to June 30, 2016, inclusive] on or after July 1, 2009, or for any action for
526 the foreclosure of a mortgage on real property owned by a religious
527 organization with a return date [during the period from October 1,
528 2011, to June 30, 2016] on or after October 1, 2011, inclusive, the
529 mediation period under the foreclosure mediation program
530 established in section 49-31m shall commence when the court sends
531 notice to each appearing party scheduling the first foreclosure
532 mediation session. The mediation period shall conclude not later than
533 the conclusion of the third mediation session between the mortgagor
534 and mortgagee or seven months after the return date, whichever is
535 earlier, except that the court may, in its discretion, for good cause
536 shown, upon the motion of any party or request by the mediator,
537 extend the mediation period subject to the provisions of subdivision
538 ~~[(9)]~~ (8) of this subsection or shorten the mediation period.

539 (2) The mortgagor and mortgagee shall appear in person at each

540 mediation session and shall have the ability to mediate, except that (A)
541 if a party is represented by counsel, the party's counsel may appear in
542 lieu of the party to represent the party's interests at the mediation,
543 provided the party has the ability to mediate, the mortgagor attends
544 the first mediation session in person and the party is available (i)
545 during the mediation session by telephone, and (ii) to participate in the
546 mediation session by speakerphone, provided an opportunity is
547 afforded for confidential discussions between the party and party's
548 counsel, (B) following the initial mediation session, if there are two or
549 more mortgagors who are self-represented, only one mortgagor shall
550 be required to appear in person at each subsequent mediation session
551 unless good cause is shown, provided the other mortgagors are
552 available (i) during the mediation session, and (ii) to participate in the
553 mediation session by speakerphone, and (C) if a party suffers from a
554 disability or other significant hardship that imposes an undue burden
555 on such party to appear in person, the mediator may grant permission
556 to such party to participate in the mediation session by telephone. A
557 mortgagor's spouse, who is not a mortgagor but who lives in the
558 subject property, may appear at each mediation session, provided all
559 appearing mortgagors consent, in writing, to such spouse's appearance
560 or such spouse shows good cause for his or her appearance and the
561 mortgagors consent, in writing, to the disclosure of nonpublic personal
562 information to such spouse. If the mortgagor has submitted a complete
563 package of financial documentation in connection with a request for a
564 particular foreclosure alternative, the mortgagee shall have thirty-five
565 days from the receipt of the completed package to respond with a
566 decision and, if the decision is a denial of the request, provide the
567 reasons for such denial. If the mortgagor has, in connection with a
568 request for a foreclosure alternative, submitted a financial package that
569 is not complete, or if the mortgagee's evaluation of a complete package
570 reveals that additional information is necessary to underwrite the
571 request, the mortgagee shall request the missing or additional
572 information within a reasonable period of time of such evaluation. If
573 the mortgagee's evaluation of a complete package reveals that

574 additional information is necessary to underwrite the request, the
575 thirty-five-day deadline for a response shall be extended but only for
576 so long as is reasonable given the timing of the mortgagor's submission
577 of such additional information and the nature and context of the
578 required underwriting. Not later than the third business day after each
579 mediation session, the mediator shall file with the court a report
580 indicating, to the extent applicable, (i) the extent to which each of the
581 parties complied with the requirements set forth in this subdivision,
582 including the requirement to engage in conduct that is consistent with
583 the objectives of the mediation program and to possess the ability to
584 mediate, (ii) whether the mortgagor submitted a complete package of
585 financial documentation to the mortgagee, (iii) a general description of
586 the foreclosure alternative being requested by the mortgagor, (iv)
587 whether the mortgagor has previously been evaluated for similar
588 requests, whether prior to mediation or in mediation, and, if so,
589 whether there has been any apparent change in circumstances since a
590 decision was made with respect to that prior evaluation, (v) whether
591 the mortgagee has responded to the mortgagor's request for a
592 foreclosure alternative and, if so, a description of the response and
593 whether the mediator is aware of any material reason not to agree with
594 the response, (vi) whether the mortgagor has responded to an offer
595 made by the mortgagee on a reasonably timely basis, and if so, an
596 explanation of the response, (vii) whether the mortgagee has requested
597 additional information from the mortgagor and, if so, the stated
598 reasons for the request and the date by which such additional
599 information shall be submitted so that information previously
600 submitted by the mortgagor, to the extent possible, may still be used
601 by the mortgagee in conducting its review, (viii) whether the
602 mortgagor has supplied, on a reasonably timely basis, any additional
603 information that was reasonably requested by the mortgagee, and, if
604 not, the stated reason for not doing so, (ix) if information provided by
605 the mortgagor is no longer current for purposes of evaluating a
606 foreclosure alternative, a description of the out-of-date information
607 and an explanation as to how and why such information is no longer

608 current, (x) whether the mortgagee has provided a reasonable
609 explanation of the basis for a decision to deny a request for a loss
610 mitigation option or foreclosure alternative and whether the mediator
611 is aware of any material reason not to agree with that decision, (xi)
612 whether the mortgagee has complied with the time frames set forth in
613 this subdivision for responding to requests for decisions, (xii) if a
614 subsequent mediation session is expected to occur, a general
615 description of the expectations for such subsequent session and for the
616 parties prior to such subsequent session and, if not otherwise
617 addressed in the report, whether the parties satisfied the expectations
618 set forth in previous reports, and (xiii) a determination of whether the
619 parties will benefit from further mediation. The mediator shall deliver
620 a copy of such report to each party to the mediation when the mediator
621 files the report. The parties shall have the opportunity to submit their
622 own supplemental information following the filing of the report,
623 provided such supplemental information shall be submitted not later
624 than five business days following the receipt of the mediator's report.
625 Any request by the mortgagee to the mortgagor for additional or
626 updated financial documentation shall be made in writing. The court
627 may impose sanctions on any party or on counsel to a party if such
628 party or such counsel engages in intentional or a pattern or practice of
629 conduct during the mediation process that is contrary to the objectives
630 of the mediation program. Any sanction that is imposed shall be
631 proportional to the conduct and consistent with the objectives of the
632 mediation program. Available sanctions shall include, but not be
633 limited to, terminating mediation, ordering the mortgagor or
634 mortgagee to mediate in person, forbidding the mortgagee from
635 charging the mortgagor for the mortgagee's attorney's fees, awarding
636 attorney's fees, and imposing fines. In the case of egregious
637 misconduct, the sanctions shall be heightened. The court shall not
638 award attorney's fees to any mortgagee for time spent in any
639 mediation session if the court finds that such mortgagee has failed to
640 comply with this subdivision, unless the court finds reasonable cause
641 for such failure.

642 (3) If the mediator reports to the court that the parties will not
643 benefit from further mediation, the mediation period shall terminate
644 automatically. If the mediator reports to the court after the first or
645 second mediation session that the parties may benefit from further
646 mediation, the mediation period shall continue.

647 (4) If the mediation period concludes and certain issues have not
648 been resolved pursuant to the mediation, the mediator may refer the
649 mortgagor to any appropriate community-based services that are
650 available in the judicial district, but any such referral shall not cause a
651 delay in the mediation process.

652 (5) The Chief Court Administrator shall establish policies and
653 procedures to implement this subsection. Such policies and procedures
654 shall, at a minimum, provide that the mediator shall advise the
655 mortgagor at the first meeting required by subdivision (4) of
656 subsection (c) of section 49-31l, as amended by this act, that: (A) Such
657 mediation does not suspend the mortgagor's obligation to respond to
658 the foreclosure action beyond the limited time frame described in
659 subdivision (6) of subsection (c) of section 49-31l, as amended by this
660 act; and (B) a judgment of strict foreclosure or foreclosure by sale may
661 cause the mortgagor to lose the residential real property or real
662 property owned by a religious organization to foreclosure.

663 (6) In no event shall any determination issued by a mediator under
664 this program form the basis of an appeal of any foreclosure judgment.

665 [(7) The foreclosure mediation program shall terminate when all
666 mediation has concluded with respect to any foreclosure action with a
667 return date during the period from July 1, 2009, to June 30, 2016,
668 inclusive.]

669 [(8)] (7) At any time during the mediation period, the mediator may
670 refer a mortgagor who is the owner-occupant of one-to-four family
671 residential real property to the mortgage assistance programs, except
672 that any such referral shall not prevent a mortgagee from proceeding

673 to judgment when the conditions specified in subdivision (6) of
674 subsection (c) of section 49-311, as amended by this act, have been
675 satisfied.

676 [(9)] (8) (A) The mediation period shall conclude following the third
677 mediation session or if more than seven months have elapsed since the
678 return date. Not later than fifteen days following the conclusion of the
679 mediation period, and any subsequent extended mediation sessions
680 held in accordance with this subdivision, any party may move for, or
681 the mediator may request, an extension of the mediation period. The
682 court shall grant only one additional mediation session per motion or
683 request upon a finding that it is highly probable the parties will reach
684 an agreement through mediation. The court may also grant one
685 additional mediation session per motion or request upon a finding that
686 any party has engaged, either intentionally or by a pattern or practice,
687 in conduct that is contrary to the objectives of the mediation program.
688 The court shall make its ruling not later than twenty days after the
689 filing of such motion or request, and no judgment of strict foreclosure
690 or any judgment ordering a foreclosure sale shall be entered until (i)
691 the court denies the motion or request, or (ii) the conclusion of the
692 subsequent extended mediation session, except as provided in
693 subparagraph (B) of this subdivision. Upon the grant of an additional
694 mediation session following the proper finding, the court shall
695 establish a reasonably expeditious deadline for such subsequent
696 extended mediation session to occur. Such extended mediation period
697 shall conclude following such subsequent extended mediation session.

698 (B) The mediation period may be extended for one additional
699 mediation session without a hearing held pursuant to this subdivision
700 provided all parties to the mediation agree that such parties would
701 benefit from such a session and, in consultation with the mediator,
702 establish a reasonably expeditious deadline for such session to take
703 place.

704 (C) To determine whether to extend mediation, the court may

705 consider all matters that have arisen in the mediation, including, but
706 not limited to, the number of motions to extend mediation, the reasons
707 for which an agreement has not been reached, the objectives of the
708 mediation program, the extent to which the parties will benefit from
709 further mediation, the reports submitted by the mediator, papers
710 submitted in connection with any motion, and any supplemental
711 reports submitted by a party. The court shall articulate its reasons in
712 the order granting or denying any such motion or request to extend
713 mediation.

714 [(10)] (9) For any case pending as of October 1, 2013, in which
715 mediation is ongoing, (A) if three or fewer sessions have been held,
716 such case shall be treated as if no sessions have been held as of said
717 date for purposes of subdivision [(9)] (8) of this subsection, and (B) if
718 four or more sessions have been held, then any party or the mediator
719 may move to terminate the mediation period or extend such period in
720 accordance with subdivision [(9)] (8) of this subsection and, if no such
721 motion to extend is made, the mediation period shall conclude after
722 the third mediation session occurring after October 1, 2013.

723 (d) (1) Not later than February 14, 2014, the Chief Court
724 Administrator shall submit, in accordance with the provisions of
725 section 11-4a, to the joint standing committee of the General Assembly
726 having cognizance of matters relating to banks, a summary regarding
727 the mediation program and a general summary of the data collected in
728 the reports submitted pursuant to subdivision (2) of subsections (b)
729 and (c) of this section from July 1, 2013, to December 31, 2013,
730 inclusive. Such summaries shall include, but not be limited to, the
731 aggregate data regarding the number of cases in mediation, the
732 number of mediation sessions held, the number of agreements reached
733 before the conclusion of the mediation period, the number of motions
734 or requests for an extension or continuance and the identity of the
735 party that made such a motion or request, whether the loan at issue
736 was serviced by a third party, the judicial district in which the
737 mediation took place and whether the mortgagor was self-represented.

738 (2) Not later than February 14, 2015, the Chief Court Administrator
739 shall submit, in accordance with the provisions of section 11-4a, to the
740 joint standing committee of the General Assembly having cognizance
741 of matters relating to banks, a summary of the reports submitted from
742 July 1, 2013, to December 31, 2014, inclusive, pursuant to subdivision
743 (2) of subsections (b) and (c) of this section. The detailed data points for
744 such summary, including data to be collected but not reported, shall be
745 developed by the Chief Court Administrator in consultation with
746 representatives from the Governor's office, the banking industry and
747 consumer advocates.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31k(1)
Sec. 2	<i>from passage</i>	49-31l
Sec. 3	<i>from passage</i>	49-31n

Section 1	<i>from passage</i>	49-31k(1)
Sec. 2	<i>from passage</i>	49-31l
Sec. 3	<i>from passage</i>	49-31n

Statement of Purpose:

To eliminate the June 30, 2016, sunset date on the Foreclosure Mediation Program and to make certain other improvements to the program.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]